



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-120
<b>Regulation title</b>	Waiver Programs: Elderly and Disabled with Consumer Direction
<b>Action title</b>	EDCD Respite Services in Children's Residential Facilities
<b>Final agency action date</b>	October 23, 2011
<b>Document preparation date</b>	September 29, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The state regulation that is affected by this action is EDCD Respite Services in Children's Residential Facilities (12 VAC 30-120-925).

This regulatory action is intended to permit the coverage of existing 480 hours of respite services, for individuals, with intellectual disabilities (ID), who are enrolled in the Elderly or Disabled with Consumer Direction waiver, to receive these services in children's residential facilities licensed for respite for children with ID. Currently, DMAS only covers waiver respite services (limited to 480 hours per year) by paying for the respite care aide or nurse to care for waiver individuals in their homes.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to

administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Due to the legislative mandate of the 2011 *Acts of Assembly*, Chapter 890 Item 297 WWW, DMAS has no discretion in adopting this action. Since this action is being adopted pursuant to a change in state law, it is therefore exempt pursuant to the *Code of Virginia* § 2.2-4006(A)(4)(a) citation. This mandate provides:

“The Department of Medical Assistance Services shall, contingent on federal approval, amend the Elderly and Disabled with Consumer Direction waiver to allow individuals in the waiver with special needs, who have a diagnosis of intellectual disability (ID), to receive respite services from a children’s residential facility licensed for respite for children with ID. The department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The department shall implement these changes to be consistent with federal approval of the waiver changes.”

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background document with the attached regulations entitled EDCD Respite Services in Children’s Residential Facilities (12 VAC 30-120-925) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

10/23/2011

/s/ Cynthia Jones

Date

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

The state regulation that is affected by this action is EDCD Respite Services in Children's Residential Facilities (12 VAC 30-120-925).

The Elderly or Disabled with Consumer Direction (EDCD) waiver has covered respite services since its inception in 1982. The purpose of waiver-covered respite services is to provide short-term personal care services to individuals who are unable to care for themselves in order to provide relief for the unpaid primary caregiver. This change is expected to be budget neutral. This service is currently received in individuals' homes and in the community.

This change permits DMAS to reimburse for already covered respite services, for children who are already covered in the waiver and who qualify for respite services, to specialized children's facilities. These facilities must be licensed by the Department of Behavioral Health and Developmental Services in order to be enrolled as DMAS providers. These facilities care for children with intellectual disabilities. DMAS expects approximately 30 current waiver individuals to benefit this additional venue in which to receive respite services.

This change does not represent an expansion of respite services nor of the individuals who qualify for this service.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, nor decreases disposable family income.